

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

UNITED STATES,	:	
	:	
Plaintiff,	:	
v.	:	
MARCUS Q. WALDEN,	:	CASE NO: 7:21-CR-036 (WLS)
	:	
Defendant.	:	
_____	:	

ORDER

On January 11, 2023, the Court held an evidentiary hearing to address Defendant's Motion for Rule 11(d) Evidentiary Hearing and Motion to Withdraw Guilty Plea and Proceed to Trial by Jury (Doc. 38) ("Motion to Withdraw Guilty Plea").

I. BACKGROUND

Defendant entered into a Plea Agreement (Doc. 20), and on October 12, 2021, the Court held a hearing on Defendant's agreement to plead guilty to Count III: Possession of a Firearm in Furtherance of a Drug Trafficking Crime. (Doc. 20 § (3)(A)).

Defendant's sentencing hearing was set for January 20, 2022. On December 16, 2021, the draft Presentence Investigation Report (Doc. 24) ("PSR") was filed, and Defendant requested an extension of time to object to the PSR. An objection to the PSR has not been filed, but motions to continue the sentencing hearing were granted, and the motion of Timothy Saviello to withdraw as counsel for Defendant was granted on March 17, 2022 (Doc. 33). Defendant's new counsel, Oliver Register, filed the Defendant's Motion to Withdraw Guilty Plea on October 17, 2022, to which the Government responded.

Fed. R. Crim. P. 32(b)(1) provides that "[t]he court must impose sentence without unnecessary delay." Further, 18 U.S.C. § 3161 provides:

If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty . . . subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

18 U.S.C. § 3161(i).

II. HEARING ON MOTION TO WITHDRAW GUILTY PLEA

Defendant asserts in his Motion to Withdraw Guilty Plea that his “entry of a guilty plea was based on the advice and assurances that were made to him by his then attorney regarding the applicability of an enhancement as a career offender. Defendant contends that the advice of counsel precipitated his entry of a guilty plea.” (Doc. 38 at 2.) Present at the hearing were Defendant, Defendant’s counsel, and counsel for the Government. Defendant presented testimony of his prior counsel, Mr. Saviello. No additional witnesses were called to testify. Defendant was informed by the Court of his right to testify in support of his Motion to Withdraw Guilty Plea. The Court recessed the hearing in order to allow Defendant to confer with Defense Counsel regarding Defendant’s desire to testify. Counsel for Defendant thereafter informed the Court that Defendant did not wish to testify, which Defendant confirmed upon direct inquiry by the Court. Defendant’s decision not to testify was knowingly, freely, and voluntarily made. At the conclusion of the hearing, the Court took the matter under advisement and Defendant’s counsel requested the opportunity to file post-hearing briefs, which the Court allowed.

Accordingly, **IT IS HEREBY ORDERED**, that the Defendant may file his post-hearing brief within fourteen (14) days from the date the hearing transcript is made available in the record. The Government may file its brief within fourteen (14) days of the date the Defendant’s brief is filed. No additional briefs shall be filed without Court approval.

The Court further finds that any delay in sentencing under Fed. R. Crim. P. 32(b)(1) is the result of Defendant’s desire to withdraw his guilty plea and the resulting, necessary proceedings, and is not due to unnecessary delay.

IT IS FURTHER ORDERED, that pursuant to 18 U.S.C. § 3161(i), in the event Defendant’s Motion to Withdraw Guilty Plea is granted, the time limits set forth in § 3161 for Defendant’s trial shall run from the date an order is entered on such motion.

SO ORDERED, this 12th day of January 2023.

/s/ W. Louis Sands

**W. LOUIS SANDS, SR. JUDGE
UNITED STATES DISTRICT COURT**